No. 91-1745 (3)

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In The

Supreme Court of the United States

October Term, 1991

ELKS NATIONAL FOUNDATION, A LEGAL ENTITY, *et al.*,

Petitioners,

vs.

FRED J. WEBER, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT BRIEF IN OPPOSITION FOR RESPONDENTS CONTINENTAL OIL COMPANY, SHELL OIL COMPANY, GUNNIP AND SCHWINN

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QUESTIONS PRESENTED

1. Did the district court properly dismiss the McDonald assignees' action for lack of subject matter jurisdiction?

2. Did the district court abuse its discretion in awarding attorney's fees as sanctions under Rule 11 Fed. R. Civ. P.?

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STATEMENT OF THE CASE

Unfortunately, there is no way to present a statement of this case simply or summarily. To understand the petitioners' claim, and why the petition is frivolous, requires a review of the

underlying facts in the Montana state court litigation, including the chain of title to the disputed interest, as well as the procedural history of this case. These matters are not satisfactorily presented in the petition for writ of certiorari.

Most of the chain of title is set out in the Montana Supreme Court decision *Gunnip v. Continental Oil Co.*, 223 Mont. 141, 727 P.2d 1315 (1986) (A58-89). The state court litigation in Montana was over title to the lessee's interest — the so-called "working interest" — in a producing oil and gas lease covering the NW¼ of Section 8, Township 7 North, Range 60 East, Fallon County, Montana. The petitioners are the "McDonald Assignees" referred to in the last three paragraphs of the *Gunnip* decision, 223 Mont. at 144-145, 727 P.2d at 1317 (A68-69).

Before July of 1955, McDonald & Eide, Inc. (MEI) owned the entire working interest in the lease, subject to the 12.5% landowner's royalty reserved by the mineral owner-lessor, and a 3% overriding royalty held by third parties not involved here. These royalties are not in dispute.

By assignment dated July 12, 1955 (A185-189), MEI assigned 50% of the working interest in the N½NW¼ of Section 8, and all of the working interest in the S½NW¼, to H. W. McDonald. This assignment was not recorded — to give constructive notice to subsequent purchasers under Montana's recording statutes — until May 15, 1963.

MEI's corporate charter was repealed in 1958. On June 1, 1961, MEI's officers, Vernon E. Eide and Jacob Von DeLinde, purported to execute an assignment on behalf of MEI conveying all of the working interest in the NW¼ of Section 8 to themselves, Eide and Von DeLinde, as individuals. This assignment was recorded on November 13, 1961, before MEI's assignment to McDonald was recorded.

Shortly thereafter, two things happened. Continental began negotiations with Eide and Von DeLinde to purchase 50% of the working interest in the NW¼. And H. W. McDonald filed a quiet title action against MEI and Eide and Von DeLinde, Civil No. 3679 in the state district court for Fallon County, to confirm his ownership of the interest covered in his unrecorded assignment from MEI.

By assignment dated May 22, 1962 (A190-198), Eide and Von DeLinde purported to convey a one-half interest in the lease to Continental. Two days later, H. W. McDonald executed a Ratification and Adoption of Assignment (A199-203) ratifying the Eide and Von DeLinde assignment to Continental as if he had been one of the assignors. In the ratification, Mr. McDonald also did three other things. He conveyed a half interest in the lease to Continental. He expressly denied that Eide and Von DeLinde had any interest in the lease. And he claimed to be the owner of the lease.

There is a misstatement on p. 7 of the petition, that it cannot be determined from the language in the ratification if Mr. McDonald assigned one-half of what he owned in the lease or a one-half interest in the lease. The ratification clearly conveyed a one-half interest in the lease to Continental, not merely half of what Mr. McDonald owned.

After Eide and Von DeLinde's assignment and McDonald's ratification were recorded on August 27, 1962, Continental proceeded to drill a producing well in the NW¼ of Section 8.

In 1964, while his quiet title action against MEI, Eide and Von DeLinde was still pending, H. W. McDonald executed assignments purporting to convey a 50% interest in the N½NW¼ of Section 8, and 50% of his interest in the S½NW¼, to Gene

Huntley, and an undivided 25% interest in the N½NW¼, and 25% of his interest in the S½NW¼, each, to Donald Iverson and Alvin Larson. These assignments were confusing because McDonald only claimed to own a 50% interest in the N½NW¼ under his assignment from MEI.

Gene Huntley, one of Mr. McDonald's assignees, is also one of the petitioners here, and the attorney for the petitioners. The rest of the petitioners are the other successors to H. W. McDonald, Iverson and Larson. The petitioners own the interest that Mr. McDonald retained after his ratification of the Eide and Von DeLinde assignment to Continental. They have been collectively referred to throughout the Montana and Federal Court litigation as the "McDonald Assignees."

The final judgment in the quiet title action against MEI and Eide and Von DeLinde was entered on June 16, 1964. It quieted Mr. McDonald's title, under his assignment from MEI, to 50% of the working interest in the N½NW¼ of Section 8, and all of the working interest in the S½NW¼, subject to his ratification agreement with Continental. The interests held by Mr. McDonald's assignees — Huntley, Iverson and Larson — were not addressed in the decree.

The petition for writ of certiorari is based on the July 16, 1964 letter by Continental to Mr. Huntley and the resulting division orders (A204-213) that came after the quiet title decree. The letter and division orders are not discussed in *Gunnip v. Continental Oil Co.*, 223 Mont. 141, 727 P.2d 1315 (1986).

Following the quiet title decree, Continental, as the operator of the producing well in the NW¼ of Section 8, was responsible for disbursing the working interest share of production to the owners of the lease. Continental was concerned about Mr. McDonald's assignments to Huntley, Iverson and Larson, because

they were inconsistent with the decree.

Continental contacted Mr. Huntley to see if Mr. McDonald's assignees could agree on what interests they owned. This led to Continental's July 16, 1964 letter to Mr. Huntley (A204-208). The letter sets out what Continental and Huntley mistakenly believed to be the working interest ownership at the time. The 84.5% figure used in the letter refers to the working interest share of production after deducting the 12.5% landowner reoyalty and the 3% overriding royalty (100% - 15.5% = 84.5%). The letter reflects the following working interest ownership in the NW¼ of Section 8:

N½NW¼

Continental —	50%
McDonald Assigness (Huntley, Iverson and Larson) —	25%
Eide and Von DeLinde —	25%
Total —	100%

S½NW¼

Continental —	50%
McDonald Assignees (Huntley, Iverson and Larson) —	50%
Total —	100%

The letter also points out that the NW¼ of Section 8 had been designated as the spacing unit for the producing well. As such, production from the well was shared according to ownership of the entire spacing unit, being all of the NW¼. Based on the ownership set out above, the "pooled" or combined working interest in the spacing unit was thought to be owned 50% by Continental, 37.5% by the McDonald Assignees and 12.5% by Eide and Von DeLinde.

In other words, Continental owned 50% of the working interest in the N½NW¼ and 50% in the S½NW¼, which, of course, is 50% of the entire NW¼. The McDonald assignees were thought to own 25% of the working interest in the N½NW¼ and 50% in the S½NW¼, which would be a combined 37.5% interest in all of the NW¼. The parties believed that Eide and Von DeLinde owned a 25% interest in the N½NW¼ and nothing in the S½NW¼, which would be a 12.5% interest in the NW¼. Division orders (used for disbursing the production proceeds) were executed by the parties based on this supposed ownership effective as of the date of first runs (or production) from the well (A211-213). At the time of the 1964 letter and division orders, the parties were mistaken about the actual ownership of Eide and Von DeLinde and the McDonald Assignees.

MEI's shareholders appointed Frank Gunnip as Receiver for the corporation in 1965. On February 20, 1967, the Receiver brought suit againt MEI and its corporate officers, Civil No. 4062 in the Fallon County District Court, to recover MEI's working interest in the NW¼ of Section 8. On December 21, 1970, the district court ruled that Eide and Von DeLinde had fraudulently obtained the assignment from MEI in 1961, and that the assignment was void. Final judgment was entered on January 7, 1966, decreeing that the Receiver owned 50% of the working interest in the N½NW¼ of Section 8 — that is, all of the working interest that MEI had not assigned to H. W. McDonald.

Shell Oil Company succeeded Continental as operator of the producing well in the NW¼ of Section 8. After Civil No. 4062, Continental continued to claim 50% of the working interest in the NW¼ under McDonald's ratification. Shell continued to pay Continental on that basis.

In 1981, the Receiver assigned a 3.75% interest in the N½NW¼ of Section 8 to Gene Huntly (also one of Mr. McDonald's assignees) and a 2.5% interest in the N½NW¼ to Robert Schwinn.

Shortly thereafter, Mr. Huntley became aware that Shell was only paying the Receiver and his assigns for 12.5% of the working interest production from the well in the NW¼ of Section 8 (based on a 25% interest in the N½NW¼), instead of 25% of the working interest production (based on a 50% interest in the N½NW¼). The Receiver and his assigns, represented by attorney Huntley, brought an action against Continental and Shell Oil in the state district court, Civil No. 5003, demanding an additional 12.5% of the working interest production over what they had received. They claimed that Shell had overpaid Continental the 12.5% working interest production that should have been paid to them.

The McDonald assignees were not named as parties in the suit. Shell moved to have them joined but its motion was denied.

Continental defended against the Receiver's action arguing that it did own a 50% working interest in the NW¼, because H. W. McDonald owned sufficient interests, at the time of his ratification, to convey the 50% interest that Continental claimed and had been paid for. Continental argued that if anyone had been overpaid it was the McDonald assignees, because the ratification exhausted Mr. McDonald's ownership in the N½NW¼, meaning that the McDonald assignees had no interest

in these lands, though they had been paid based on their claim to a 25% interest in the N½NW¼. As such, they were the ones that had been overpaid the 12.5% of the working interest production from the spacing unit well that should have gone to the Receiver and his assigns.

In 1985, the state district court granted summary judgment to Continental, confirming its 50% working interest in all of the NW¼ of Section 8. However, the Montana Supreme Court in *Gunnip v. Continental Oil Company,* 223 Mont. 141, 727 P.2d 1315 (1986) (A58), reversed and remanded, saying:

> The court cannot decide Continental's interest under McDonald's ratification agreement without McDonald's assignees before the court. They must be joined on remand.
>
> Continental's asserted 50% interest in the N½ of the lease [meaning the N½NW¼ of Section 8] must be tested against the interest of McDonald's assignees and their successors in interest. The order of the District Court awarding summary judgment to Continental is reversed. The matter is remanded for further proceedings in accordance with this opinion.

Gunnip v. Continental Oil Co., 223 Mont. at 144, 727 P.2d at 1317 (A69).

On remand to the state district court, the McDonald assignees were joined as plaintiffs. The Receiver and Schwinn obtained separate counsel and were redesignated as defendants. The McDonald assignees argued that it was not clear from the ratification whether Mr. McDonald intended to convey a half interest in the lease or only half of his interest. They relied on

the July 16, 1964 letter and the resulting division orders as evidence that the ratification should be interpreted as conveying only half of Mr. McDonald's ownership, because the letter and division orders showed the McDonald assignees as owning half of the interest covered by the MEI assignment to Mr. McDonald.

Continental argued that the ratification clearly conveyed "an undivided one-half interest" in the lease as a matter of law, and the mistaken letter and division orders did not affect Continental's title to this interest.

On April 29, 1988, the district court granted partial summary judgment to the McDonald assignees (A92-122), holding that the ratification only transferred half of Mr. McDonald's interest in the lease. The court's judgment was based largely on the 1964 letter and division orders.

Continental applied to the Montana Supreme Court for a writ of supervisory control. In doing so, Continental pointed out that the earlier *Gunnip* decision gave no indication that the ratification was ambiguous, and had even recognized that the ratification conveyed "an undivided one-half interest" in the lease.

The McDonald assignees responded (A219-221) saying that they were not before the court when *Gunnip* was decided, so they were free to assert a different interpretation of the ratification, a different theory of ownership, based on the 1964 letter and division orders. They have taken the same position on p. 13 of their petition.

The McDonald assignees briefed the issued concerning the interest conveyed by the ratification, and the effect of the 1964 letter and division orders, argued them orally to the Montana Supreme Court, and even supported Continental's request that the court decide Continental's ownership once and for all. In

Continental Oil v. Elks Nat'l Foundation, 235 Mont. 438, 767 P.2d 1324 (1989) (A123-135), the Supreme Court reversed the district court, holding that the ratification conveyed a 50% interest in the lease to Continental, that Continental had not relinquished this interest, and that the Receiver and his assigns owned the other 50% interest in the N½NW¼.

The result of the court's ruling is that Continental was right. The combined working interest in the NW¼ of Section 8 is owned 50% by Continental, 25% by the Receiver and his assigns, and 25% by the McDonald assignees. The Receiver and his assigns have been underpaid by 12.5% of the working interest production. This 12.5% share that should have gone to the Receiver and his assigns, was mistakenly paid to the McDonald assignees. The McDonald assignees received 37.5% of the working interest production, based on their claim to a 25% interest in the N½NW¼ plus a 50% interest in the S½NW¼. Under the Montana Supreme Court's ruling, however, they have no interest in the N½NW¼, meaning they have been overpaid for 12.5% of the working interesst production. Mr. Huntley has been overpaid as one of the McDonald assignees, and underpaid as one of the Receiver's assigns.

After the Montana Supreme Court's decision in *Continental Oil v. Elks Nat'l Foundation,* the McDonald assignees did not petition for writ of certiorari to the United States Supreme Court under 28 U.S.C. § 1257. It is not clear why the petitioners have cited this statute on pp. 4-5 of their petition, since they have not invoked it here. Instead, by complaint dated April 4, 1989 (A225-244), they brought an action under 42 U.S.C. § 1983 (Pet. 3-4) in the United States District Court against the Montana Supreme Court justices, the two state district court judges, Continental, Shell Oil, Gunnip and Schwinn. They alleged that the Montana Court denied them due process by depriving them of their property rights without a hearing. More specifically, they

claimed that the Montana court did not give them a hearing on how the ratification should be construed or the effect of the 1964 letter and division orders.

Their claim is that the Montana court in the *Continental* decision held them to its prior ruling in *Gunnip* (where they were not parties) as to the interest conveyed by the ratifiction, and refused to hear or consider their arguments and evidence of title based on the 1964 letter and division orders.

On November 17, 1989, the district court issued its memorandum and order (A33-46) dismissing the McDonald assignees' complaint for lack of subject matter jurisdiction, based primarily on 28 U.S.C. § 1257(a) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The district court also found that the McDonald assignees' complaint was not well grounded in law, and awarded attorney's fees to the defendants under 42 U.S.C. § 1988, or alternatively as sanctions under Rule 11, Fed. R. Civ. P. (A43-45). The McDonald assignees did not challenge the reasonableness of the attorney's fees awarded (A29).

The McDonald assignees then appealed to the United States Court of Appeals for the Ninth Circuit. They relied solely on *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir. 1985), *vacated*, 477 U.S. 902 (1986), in attempting to find grounds for subject matter jurisdiction in the federal district court.

In *Elks Nat'l Foundation v. Weber*, 942 F.2d 1480 (9th Cir. 1991) (A1-16), the court of appeals affirmed the district court in dismissing the McDonald assignees' complaint for lack of subject matter jurisdiction, and the award of attorney's fees. The appeals court also awarded attorney's fees on appeal.

Like the district court, the court of appeals relied on 28 U.S.C. § 1257(a) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) holding that "[t]he Supreme Court of the United States is the only federal court authorized to hear appeals from state courts." *Elks Nat'l*, 942 F.2d at 1483 (A10).

SUMMARY OF ARGUMENT

The district court properly dismmissed the McDonald assignees' complaint for lack of subject matter jurisdiction. Their § 1983 action, like their petition here, is essentially an attempt to continue the state court litigation in Montana, to have the Montana Supreme Court's ruling on ownership reviewed by the federal courts. However, the United States district courts are courts of original jurisdiction. They cannnot hear appeals from a state supreme court. The Supreme Court of the United States is the only federal court authorized to hear appeals from state courts, and the McDonald assignees did not appeal the Montana Court's decision to the United States Supreme Court.

More importantly, the Montana Supreme Court did not deny the McDonald assignees due process or deprive them of their property rights without a hearing. The Montana Court heard, considered and even discussed the issues raised and arguments presented by the McDonald assignees, before deciding the ownership question.

The complaint filed by the McDonald assignees in the District Court was not well grounded in fact, nor warranted by existing law, or any good faith argument. It was baseless, frivolous and unreasonable. The District Court's award of sanctions under Rule 11, Fed. R. Civ. P. was not an abuse of discretion.

The McDonald assignees' petition for writ of certiorari is

equally as frivolous as their complaint in the district court. The respondents should be awarded just damages and single or double costs.

REASONS FOR DENYING THE WRIT

I.

THE DISTRICT COURT PROPERLY DETERMINED THAT IT LACKED SUBJECT MATTER JURISDICTION.

The district court correctly dismissed the McDonald assignees' complaint for lack of subject matter jurisdiction. The United States district courts are courts of original jurisdiction. They cannot hear appeals from a state supreme court. The Supreme Court of the United States is the only federal court authorized under 28 U.S.C. § 1257(a) to hear appeals from state courts. This statute provides in relevant part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the . . . statutes of . . . the United States.

Furthermore, *District Court of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983) holds that:

> [The United States district courts] do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review

of those decisions may be had only in this Court.

In addition, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) is also authority for this principle that a United States district court does not have power to review a judgment by the highest court of a state on the ground that the judgment is in conflict with the United States Constitution.

The case law applying this rule is voluminous. It would serve no useful purpose to cite the many cases that have followed the "*Rooker-Feldman* principle." Accordingly, only a fraction of these cases are listed below. *Atlantic Coast Line R. Co. v. Engineers,* 293 U.S. 21, 286 (1970); *Allah v. Superior Court of State of Cal.*, 871 F.2d 887 (9th Cir. 1989); *Anderson v. Lecon Properties, Inc.*, 457 F.2d 929, 930 (8th Cir. 1972); *Van Sicle v. Holloway,* 791 F.2d 1431, 1436 (10th Cir. 1986); *Hollins v. Wessel,* 819 F.2d 1073, 1074 (11th Cir. 1987); *Martinez Rivera v. Trias Monge,* 587 F.2d 539, 541 (1st Cir. 1978); *Reynolds v. State of Georgia,* 640 F.2d 702, 705 (5th Cir. 1981); *Hale v. Harney,* 786 F.2d 688, 690-691 (5th Cir. 1986).

II.

THE CLAIMS BY THE MCDONALD ASSIGNEES ARE BARRED BY *RES JUDICATA.*

Res judicata means "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Kramer v. Chemical Constr. Corp.*, 456 U.S. 461, 466 (1982). The reasons for the doctrines of *res judicata* and collateral estoppel are to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudicaition." *Allen v. McCurry,* 449 U.S. 90, 94 (1980).

The full faith in credit statute in 28 U.S.C. § 1738 provides in relevant part that "[t]he records and judicial proceedings of any court of any such State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . as they have by law or usage in the courts of such State . . . from which are taken." It is well settled that under this statute the federal courts must give state court judgments the same preclusive effect they would be given under the law of that state. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 81 (1984).

The subject matter and issues in the action brought by the McDonald assignees in the United States district court are precisely the same as in the Montana litigation. The main issue in both is the ownership of the working interest in the NW¼ of Section 8. However, the Montana Supreme Court has already decided this ownership question, and its decision is conclusive on the lower federal courts.

In arguing that the district court has subject matter jurisdiction, the McDonald assignees rely on *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir. 1985), *vacated*, 477 U.S. 902 (1986) commencing at p. 34 of their petition. Oddly enough, on pp. 54-64 of the petition, they even quote from one of the briefs to this Court in the *Robinson* case. However, the *Robinson v. Ariyoshi* decision is primarily important concerning the doctrine of *res judicata*, not subject matter jurisdiction.

The court of appeals considered the McDonald assignees' argument based on *Robinson v. Ariyoshi*. It found that "[t]heir reliance on that case is both misplaced and ill-advised." *Elks Nat'l*, 942 F.2d at 1483 (A10). Since the *Robinson* case was also decided by the Courts of Appeals for the Ninth Circuit, naturally the appellate court's analysis of the case has special insight. The court said that in *Robinson* it "analyzed the bar to federal court

jurisdiction under *Feldman* as essentially calling for a *res judicata* analysis on whether an issue had been considered and decided in the state courts." But where a state court has considered and decided the question presented, an action in federal court concerning the same issue is an impermissible appeal from the state court dicision. *Elks Nat'l,* 949 F.2d at 1484 (A11).

The appeals court also found that the Montana Supreme court did hear and decide the questions presented by the McDonald assignees, and that they had clearly been "given an opportunity to litigate the issue and that the Montana Supreme Court considered those arguments." *Elks Nat'l,* 949 F.2d at 1484 (A12). The court said that:

> Thus, the McDonald Assignees' reliance on *Robinson* [*v. Ariyoshi*] is ill-advised because any res judicata analysis, no matter how myopic, will readily disclose that the Montana courts have decided and re-decided the issue of the quality and quantity of [their] interests in the lease, and that the McDonald Assignees were afforded a full and fair opportunity to be heard."

Elks Nat'l, 942 F.2d at 1484 (A12).

The appeals court also pointed out that the facts in *Robinson v. Ariyoshi* "are distinguishable from the facts of this case," saying:

> The state court [in *Robinson*] issued a decision which allegedly overturned the existing state water rights system. It was the imposition of a new substantive rule that gave rise to claims of a taking without due process in *Robinson [v. Ariyoshi].* The relief granted by the federal district court which

> was the subject of the appeal in *Robinson [v. Ariyoshi]* was an injunction against applying the new law announced [by the state court]. In *Continental Oil* and *Gunnip*, the state court applied well-polished rules of Montana law that unambiguous written instruments do not need interpretation. In this case, there is no new substantive rule of Montana law at issue which could take property without due process if applied in other cases. It is only the specific result in *Continental Oil* which the McDonald assignees have challenged in federal court. If McDonald's assignees were entitled to pursue their claim in federal court, every disappointed litigant in a property dispute would contend in federal court that the state court decision constituted a taking without due process. *Robinson [v. Ariyoshi]* provides appellants no method for obtaining federal jurisdiction over their claim. McDonald's assignees' sole avenue for redress in the federal system was a petition for writ of certiorari to the Supreme Court of the United States.

Elks Nat'l, 942 F.2d at 1485 (A13).

III.

THE MCDONALD ASSIGNEES HAVE NOT BEEN DEPRIVED OF DUE PROCESS.

The McDonald assignees alleged in their complaint that the Montana Supreme Court deprived them of due process in *Continental Oil v. Elks Nat'l Foundation*, 235 Mont. 438, 767 P.2d 1324 (1989) (A123) by holding them to its prior ruling in *Gunnip v. Continental Oil Co.*, 223 Mont. 141, 727 P.2d 1315

(1986) (A58), as to the interest conveyed to Continental by H. W. McDonald's ratification. They complained that they were not parties when *Gunnip* was decided, and that the Montana Court in *Continental* refused to hear or consider their arguments and evidence of title based on the 1964 letter and division orders.

The McDonald assignees have taken this same position on p. 18 of their petition for writ of certiorari ("The Montana Supreme Court, in its [*Continental*] opinion, considered the parties, the lower court, and itself bound by the language of the previous decision [in *Gunnip*]."), and on p. 30 ("the Court of Appeals like the Montana Supreme Court, completely disregarded this important document [the July 16, 1964 letter]. * * * we did not complain about procedure but about the Montana Supreme Court's refusal to consider our evidence ot title based upon a binding contract of at least equal dignity with the assignment upon which Continental relies [referring to the 1964 letter and resulting division orders]."), and on p. 32 ("The contract upon which we rely [the 1964 letter and division orders] . . . was a separate contract . . ., wholly independent of the McDonald assignment and of equal legal dignity. This circumstance, which was brought home fully to both the Montana Supreme Court and the Ninth Circuit Court of Appeals was totally ignored by both courts."). They are absolutely wrong.

In *Continental Oil v. Elks National Foundation*, 235 Mont. 438, 440-442, 767 P.2d 1324, 1326-1327 (1989) (A130-134), the Montana Supreme Court said this:

> The [McDonald assignees] argue here, as they did before the District Court, that the ratification is ambiguous so that a court must look beyond the four corners of the document to interpret it. The Court was not persuaded by that argument in *Gunnip*, nor is it now.

* * *

Then, as now, we found no ambiguity in the ratification agreement.

* * *

We have considered all materials and evidence submitted by plaintiffs [the McDonald assignees], including copies of certain oil division orders and correspondence between Continental and plaintiffs' attorney [Gene Huntley]. We have considered whether those might support a theory of adverse possession, waiver, or estoppel against Continental. However, we find nothing to indicate that Continental has relinquished its claim to any portion of one-half of the working interest in the N½NW¼. The documents reflect Continental's mistaken reliance, at that time, on the validity of interests claimed by Vernon Eide and J. Von DeLinde. This ended after the 1970 judgment voiding the conveyance to Mr. Eide and Mr. Von DeLinde and vesting ownerhsip in Gunnip [citation omitted]. Plaintiffs contend that the documents demonstrate that Continental relied upon a conveyance to it from Mr. Eide and Mr. Von DeLinde. We do not accept that contention. The mere statement in the letters and division order of a supposed interest held by Eide and Von DeLinde is not enough to establish a loss of the interest conveyed to continental from H. W. McDonald. The documents also indicate that Mr. Huntley and two other McDonald assigns held interest in the lease. They do not name the grantor of any of the interests, however. The documents

> uniformly show Continental's claim to one-half of the working interest. We conclude that the plaintiffs have failed to present substantial evidence to support a theory of adverse possession, waiver, or estoppel against Continental.

The court of appeals also referred to this language in *Elks Nat'l Foundation v. Weber*, 942 F.2d at 1482 (A8).

There is no indication in the *Continental* decision that the Montana Supreme Court refused to hear or consider the arguments presented by the McDonald assignees on how the ratification should be interpreted, or the effect of the 1964 letter and division orders. The opposite is true. The Montana court expressly considered and discussed their arguments, but was not persuaded. On pp. 19, 30, 31, 32 and 65 of their petition, the McDonald assignees argue that the Montana Supreme Court and the court of appeals refused to consider their ownership claims based on the 1964 letter and division orders. Contrary to these misstatements, the Montana Court did consider the 1964 letter and division orders, and the arguments based on them that the McDonald assignees presented.

Due process does not require a court to be convinced by what it hears. That is true even if the court is wrong. The Fourteenth Amendment's due process guarantee does not ensure against judicial error. *Stein v. People of State of New York*, 346 U.S. 156, 181 (1953) ("Mr. Justice Brandeis, for this Court, long ago warned that the Fourteenth Amendment does not, in guaranteeing due process, assure immunity from judicial error. *Milwaukee Electric Railway & Light Co. v. State of Wisconsin ex rel. City of Milwaukee*, 252 U.S. 100, 106 . . . ."). The contention that a state court decision is erroneous does not present a federal question. *Bell Telephone Co. v. Pennsylvania Public U. Com'n.*, 309 U.S. 30, 32 (1940). A state cannot be deemed guilty of violating

the constitutional provision against deprivations "without due process of law" because of a decision, even if it is erroneous, of its highest court while acting within its jurisdiction. *Ex Parte Converse*, 137 U.S. 624 (1891). Even errors of a state court in interpreting and applying the laws of the state does not establish any denial of due process. *Howard v. Kentucky*, 200 U.S. 164 (1906).

However, in this particular case the Montana Supreme Court's ownership ruling in *Continental* was not wrong. There are clear and cogent reasons why the Montana Court was unconvinced by the McDonald assignees's arguments. It has long been well established in Montana that if the language of a deed (like the ratification) is clear on its face, its provisions control the court's interpretation of the interest conveyed. Moreover, it is a question of law whether a deed is clear on its face. The intent of the parties is only considered when a deed is unambiguous. *See Morning Star Enterprises v. R. H. Grover*, 247 Mont. 105, 111, 805 P.2d 553, 556 (1991). H. W. McDonald's ratification conveyed "an undivided one-half interest" in the lease to Continental. The Montana Supreme Court ruled that Continental still owns this interest. It is as simple as that.

"The fundamental requirement of due process is the opportunity to be heard and it is an 'opportunity which must be granted at a meaningful time and in a meaningful manner.' " *Parratt v. Taylor*, 451 U.S. 527, 540 (1981) [quoting from *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)], *overruled on other grounds, Daniels v. Williams*, 474 U.S. 327 (1986). The Montana Supreme Court heard and considered and discussed the issues raised by the McDonald assignees before deciding the working interest ownership of the lease. Indeed, it was the Montana court that required the McDonald assignees to be joined in the action so that they could be heard on the ownership question.

IV.

THE FEDERAL DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING SANCTIONS AGAINST THE MCDONALD ASSIGNEES.

On pp. 66-67 of the petition, the McDonald assignees argue that the district court's award of attorney's fees should be reversed. The district court awarded attorney's fees against the McDonald assignees based alternatively on 42 U.S.C. § 1988 or as sanctions under Rule 11, Fed. R. Civ. P.

> It is now clear that the central purpose of Rule 11 is to deter baseless filings in the District Court . . . . [Citation omitted.] Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well-grounded in fact, legally tenable, and "not interposed for any improper purpose." * * * [A]ny interpretation [of Rule 11] must give effect to the rule's central goal of deterrence.

Cooter & Gel v. Hartmarx Corp., 496 U.S. ____, ____, 110 L. Ed. 2d 359, 374, 110 S. Ct. 2447, ____ (1990). *Cooter & Gel*, 496 U.S. at ____, 110 L. Ed. 2d at 384, 110 S. Ct. at ____, also "hold[s] that an appellate court should review the district court's decision in a Rule 11 proceeding for an abuse of discretion."

Given what the Montana Supreme Court said in *Continental Oil v. Elks Nat'l Foundation*, the McDonald assignees' complaint in the district court was not well grounded in fact nor warranted by existing law or any good faith argument. It was baseless, frivolous and unreasonable. Rule 11 sanctions were proper. The district court's award was not based on an erroneous view of the

law. The district court did not have subject matter jurisdiction over the case brought by the McDonald assignees seeking appellate review of the Montana Supreme Court's ruling on ownership. Furthermore, the McDonald assignees did not contest the reasonableness of the fees awarded by the district court as sanctions.

After considering the McDonald assignees' complaint and their argument on subject matter jurisdiction, the court of appeals held that it was "clear that the district court did not abuse its discretion in awarding attorney's fees to appellees." *Elks Nat'l*, 942 F.2d at 1485 (A14).

However, before awarding attorney's fees on appeal under 42 U.S.C. § 1988, the court went on to examine the merits of the McDonald assignees' claim that they were denied due process by the Montana Supreme Court. The appeals court correctly found that:

> The proceedings before the Montana Supreme Court do not support this contention. The McDonald assignees briefed the ambiguity issue, orally argued before that court, and, at oral argument, supported Continental's request for determination of Continental's interest in the N½ [of the lease].

Elks Nat'l, 942 F.2d at 1486 (A15). The appellate court succinctly captured the McDonald assignees' position, and why their § 1983 action has no merit, with the following:

> The McDonald assignees confuse process with result.
>
> No denial of due process is shown by the record

> in this case. The district court not only lacked jurisdiction, the substantive position of the McDonald assignees is devoid of legal merit. Under these circumstances, an award of attorney's fees and costs on appeal is appropriate.

Elks Nat'l, 942 F.2d at 1486 (A16).

It should be pointed out that the claims for fees and costs on appeal came to more than $30,311 on over 265 hours of work. The appellate court only awarded $7,741 in fees on appeal (less than one-third of the total) which did not include any of Continental's out-of-pocket expenses in attending oral argument. The claims by the McDonald assignees are frivolous, but nonetheless expensive for the other parties.

V.

JUST DAMAGES AND COSTS SHOULD BE AWARDED AGAINST THE PETITIONERS.

The McDonald assigneees' petition for writ of certiorari is just as frivolous as their complaint in the district court and their appeal to the Court of Appeals for the Ninth Circuit. Under Rule 42.2 of the Rules of the Supreme Court of the United States, "the Court may award the respondent . . . just damages and single or double costs," which may be awarded against the petitioners or their attorney or both. The court should award damages, including reasonable attorney's fees, as well as costs against the petitioners and their attorney.

CONCLUSION

The McDonald assignees' petition for writ of certiorari does not present any special or important reasons for this Court to exercise its discretionary jurisdiction. There is no good reason why this case should be reviewed. The petition should be denied.

The Montana Supreme Court decided the ownership question after hearing and considering and discussing the issues raised by the McDonald assignees. The McDonald assignees then brought an action in the district court under 42 U.S.C. § 1983, to have the Montana court's ruling on ownership reviewed. The district court properly dismissed their complaint for lack of subject matter jurisdiction and imposed Rule 11 sanctions. The United States Court of Appeals correctly affirmed the dismissal and the award of sanctions. The court of appeals also analyzed the substantive position of the McDonald assignees, and correctly found that it has no legal merit. The petition for writ of certiorari is equally as frivolous, and just damages and single or double costs should be awarded under Rule 42.2 of the Supreme Court Rules.

Respectfully submitted,

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